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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,993	02/02/2006	Marco Areddu	09952.0021	2598
22852	7590	01/19/2010		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER	
			NG, FAN	
			ART UNIT	PAPER NUMBER
			2471	
MAIL DATE	DELIVERY MODE			
01/19/2010	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,993	Applicant(s) AREDDU ET AL.
	Examiner Fan Ng	Art Unit 2471

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 September 2009.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-44 is/are pending in the application.

4a) Of the above claim(s) 1-22 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 23,24,32-34,42 and 44 is/are rejected.

7) Claim(s) 25-31,35-41 and 43 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Response to amendment

Specification

1. The disclosure is objected to because of the following informalities: Claim 44 recites "A computer readable medium storing instructions for execution by...", but specification does not provide any antecedent basis for this computer readable medium. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 44 is rejected under 35 U.S.C. 101 for being directed to non-statutory subject matter.

Claim 44 recites "A computer readable medium storing instructions for execution by a ...", in line 1-2.

In claim 44, "A computer readable medium" can also be interpreted as a transmission media that takes the *transitory* form of signals, acoustic, carrier or light

waves, such as those generated during radio wave and infrared data communications. Transmission media that cover “signals, light waves, radio waves, or carrier waves” are not a Manufacture within the meaning of 101, and electrical connections, optical coaxial cables, copper wire and fiber optics fibers, on which the instructions are still unavailable to the processor. In such embodiments, the instructions are still unable to act as a computer component and have its functionality realized. Thus, claims that recite nothing but the physical characteristics of a form of energy, such as frequency, voltage, or the strength of a magnetic field, define energy or magnetism, *per se*, and as such are nonstatutory natural phenomena. Thus, this embodiment is non-statutory. Furthermore, a claim that covers both statutory and nonstatutory embodiments embraces subject matter that is not eligible for patent protection and therefore is directed to non-statutory subject matter.

In view of the above analysis, claim 44 is ineligible for patent protection as failing to be limited to embodiments which fall within a statutory category.

It is recommended that the limitation *“A computer readable medium storing instructions for execution by a ...”* recited in claim 44 be amended to *“A non-transitory computer-readable medium storing instructions for execution by a”*

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

- a. A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 23-24, 32-34, 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Kroboth et al. (20040037230).

Regarding to claim 23, 33, Kroboth teaches incrementally generating traffic quanta representative of said traffic (**Fig. 2, traffic is measure at #710 and traffic quanta are generate to represent the traffic at Fig. 3A**) at an evaluation module (**Fig. 2, #702 evaluate the data collected by #710 and display at 712**) independent from a plurality of exchanges and nodes of the communications network (**there are no relationship between #702 and plurality of data source #748, 746 etc., except collect data from them**), based on receiving a measured traffic volume (**#734 receive measured traffic**) of said incoming traffic directed towards a given destination (**incoming traffic from #738, 740 etc., directed to data collectors (given destination)**) as an input directly (**the traffic as an input to the data collectors**) from the at least one exchange (**from #738, 740 etc.,**); and producing (**representation of the traffic is produced at Fig. 3A**), at the evaluation module (**Fig. 2, #702**), a distribution of said traffic quanta over said links (**Fig. 3A is a traffic distribution measured over plurality of links #748, 746, 744 etc.,**) in said

plurality according to said set of routing rules (**[0024]: the measurement is according to routing rules, eg. congestion event will occur base on the routing decision make by plurality of exchange #748, 746 etc.**), the distribution thus obtained being statistically representative of the dispersion of said incoming traffic over said plurality of links at said exchange (**Fig. 3A**).

Regarding to claim 24, 34 Kroboth teaches the method of claim 23, comprising the steps of: measuring the volume of said incoming traffic directed toward said given destination (**[0018]: traffic are measured as traffic direct toward #710**); and generating said traffic quantums by subdividing said measured traffic volume by a given number of loop steps (**Fig. 4, the normalization process**).

Regarding to claim 32, 42 Kroboth teaches the method of claim 23, wherein said steps of incrementally generating traffic quantums representative of said traffic and producing a distribution of said traffic quantums are performed in the absence of interference with operation of said communications network (**data collector #710 do not send packet to each devices that it is morning thus there is no interference to those device**).

Allowable Subject Matter

4. Claims 25-31, 35-41, 43-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments, see page 12-14, filed on 09/03/2009, with respect to prior art rejection, have been fully considered, but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fan Ng whose telephone number is (571) 270-3690. The examiner can normally be reached on Monday-Friday; 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. N./
Examiner, Art Unit 2471

/Chi H Pham/
Supervisory Patent Examiner, Art
Unit 2471